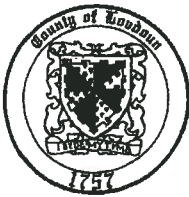


# Tab 5





Loudoun County, Virginia

[www.loudoun.gov](http://www.loudoun.gov)

Office of the County Administrator

1 Harrison Street, S.E., 5th Floor, P.O. Box 7000, Leesburg, VA 20177-7000

Telephone (703) 777-0200 • Fax (703) 777-0325

At a business meeting of the Board of Supervisors of Loudoun County, Virginia, held in the County Government Center, Board of Supervisors' Meeting Room, 1 Harrison St., S.E., Leesburg, Virginia, on Tuesday, December 6, 2005 at 9:30 a.m.

PRESENT: Scott K. York, Chairman  
Bruce E. Tulloch, Vice Chairman  
James G. Burton  
James E. Clem  
Eugene A. Delgaudio  
Sally Kurtz  
Stephen J. Snow  
Mick Staton Jr.  
Lori L. Waters

IN RE: TRANSPORTATION / LAND USE COMMITTEE REPORT / ZMAP 2002-0001 -- KIRKPATRICK WEST

Mr. Snow moved that the Board of Supervisors approve ZMAP 2002-0001, Kirkpatrick West, subject to the proffers dated October 26, 2005, the concept Development Plan dated May 2004, revised through November 29, 2005, and the Letter of Clarification dated November 29, 2005, as recommended by the Transportation / Land Use Committee.

Seconded by Mr. Staton.

Voting on the Motion: Supervisors Clem, Delgaudio, Kurtz, Snow, Staton, Tulloch, Waters, and York - Yes; Supervisor Burton -- No.

COPY TESTE:

DEPUTY CLERK FOR THE LOUDOUN  
COUNTY BOARD OF SUPERVISORS

C:\my documents\resolutions\2005 resolutions\12-06-05 bos resolution --k-kirkpatrick west

**LOYALTY ASSOCIATES, LC**  
**8614 Westwood Center Drive, Suite 900**  
**Vienna, Virginia 22182**  
**(703) 442-8992**

November 29, 2005

**BY HAND DELIVERY**

Scott K. York, Chairman  
Loudoun County Board of Supervisors  
1 Harrison Street, S.E., 5th Floor  
P. O. Box 7000  
Leesburg, Virginia 20177-7000

Re: **Kirkpatrick West; ZMAP 2002-0001**

Dear Chairman York:

This letter is submitted as clarification of the Kirkpatrick West Proffer Statement, dated October 26, 2005 (the "Proffer Statement"). Unless clarified below, all other provisions in the Proffer Statement remain unchanged and in full force and effect.

For the purposes of this letter of clarification, the term "Owner" refers to Loyalty Associates, LC, the undersigned current property owner, as well as their successors and assigns. The Owner hereby clarifies and amends the Proffer Statement as follows:

- I. **Substantial Conformity**. Proffer I.A. is hereby clarified and amended by deleting the existing language of Proffer I.A. and insertion of the following in its place:
  - A. **Substantial Conformity**. The Property shall be developed in substantial conformity with Sheets 1-9 of the Kirkpatrick West Rezoning Application attached hereto as Exhibit A dated May 2004, revised through November 29, 2005, prepared by Urban Engineering Associates, Inc. (collectively the "Concept Plan"). The Property shall be developed with no more than 373 residential dwelling units, including up to 6.25% affordable dwelling units (ADU's), and consisting of the following mix:
    1. **Market Rate Dwelling Units**
      - 171 single family detached units (maximum)
      - 54 single family attached units (maximum)
      - 122 multi-family units (maximum)
    2. **Affordable Dwelling Units (ADU's)**
      - 12 single family attached (maximum)
      - 12 multi-family units (maximum)

In addition to the twenty-four (24) ADU's required to be provided as indicated above, the Owner agrees to provide two additional single family detached ADU's in excess of the 6.25% provided in the above calculation.

The Owner shall work in cooperation with staff to ensure that the two single family detached units will be priced in accordance with the guidelines set forth by the Affordable Dwelling Unit Advisory Board and shall not exceed a price level which can be afforded by qualifying individuals for the ADU program.

The Property shall also include a retail area and a community recreation area in the areas on the Concept Plan designated as the retail area and the community recreation center, respectively. The retail area, subject to zoning modification approval, shall consist of a maximum of 15% of the total area of the Property and will contain a mixture of retail and service uses, in accordance with the Retail and Service Use provisions of the PD-H3 Zoning District, and shall be administered pursuant to the PD-CC-CC zoning regulations. Active recreation uses including a community building, swimming pool, play area and tennis courts shall be located in the community recreation area and in other areas indicated on the Concept Plan.

2. **Public Site Conveyance.** Proffer V.B.3. is hereby clarified and amended by deleting the existing language of Proffer V.B.3. and insertion of the following in its place:
3. The Owner shall convey to the County the 15.29 acre public use area for recreational uses located in Land Bay "C". The Owner shall construct to County standards one soccer field (without lights) and the parking area as shown in Land Bay C of the Concept Plan. At the County's sole discretion, the County may locate a maximum 5-acre fire & rescue and/or public safety site on the north side of the internal site road in Land Bay C. Construction of the active recreation facilities in Land Bay C and the conveyance of such facilities to the County, shall be completed prior to the issuance the zoning permit for the 350<sup>th</sup> residential unit.

In addition, prior to the issuance of the zoning permit for the 350<sup>th</sup> residential unit, the Owner shall pay to the County a contribution in the amount of TWO-HUNDRED THOUSAND AND 00/100 (\$200,000) to be used for site development costs associated with the fire and rescue and/or public safety site or other public use on this site. The amount of this contribution shall escalate in accordance with the Consumer Price Index from the base year of 2005. This contribution shall be credited against the capital facilities payment in Proffer V.A.

Sanitary Sewer and Water will be extended to the site boundary no later than the issuance of the zoning permit for the 350<sup>th</sup> residential unit.

[SIGNATURE ON FOLLOWING PAGE]

The Owner warrants that it owns all interest in the Property, as defined in the Proffer Statement, that it has full authority to bind the Property to these conditions, that no signature from any third party is necessary for these conditions to be binding and enforceable in accordance with their terms, that the undersigned is fully authorized to sign the letter of clarification on behalf of the Owner, and that the conditions contained in the letter of clarification are entered into voluntarily.

**LOYALTY ASSOCIATES, LC**

By: \_\_\_\_\_ (SEAL)  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**COMMONWEALTH OF VIRGINIA**

CITY/COUNTY OF \_\_\_\_\_, to-wit:

Before the undersigned, a Notary Public in and for the aforementioned jurisdiction, personally appeared \_\_\_\_\_, as \_\_\_\_\_ of Loyalty Associates, LC, who acknowledged that he executed the foregoing Proffers with the full power and authority to do so.

IN WITNESS WHEREOF, I have affixed my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**KIRKPATRICK WEST**  
***(ZMAP 2002-0001)***

**PROFFER STATEMENT**

***July 19, 2004***  
***December 6, 2004***  
***January 3, 2005***  
***July 14, 2005***  
***August 30, 2005***  
***October 14, 2005***  
***October 26, 2005***



# KIRKPATRICK WEST

(ZMAP 2002-0001)

## PROFFER STATEMENT

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### Exhibits

Exhibit A: Kirkpatrick West Rezoning Application Plan Set, prepared by Urban Engineering & Associates, Inc., dated May 2004, revised through July 14, 2005

Exhibit B: Design Modifications for Kirkpatrick West, dated July 14, 2005



# KIRKPATRICK WEST

(ZMAP 2002-0001)

## PROFFER STATEMENT

JAN 23 2006

October 26, 2005

### PREAMBLE

Pursuant to Section 15.2-2303 of the Code of Virginia, 1950, as amended, and the Revised 1993 Loudoun County Zoning Ordinance, Loyalty Associates, LC, ("Owner") owner of parcel 249-17-6394, consisting of approximately 169.9 acres of real property (the "Property") which is the subject of rezoning application ZMAP 2002-0001, hereby voluntarily proffers that development of the Property shall be in substantial conformity with the proffers as set forth below (the "Proffers") and with the exhibits and zoning ordinance modifications attached hereto, which are incorporated herein by reference. All Proffers made herein are contingent upon the approval by the Board of Supervisors of Loudoun County (the "Board") of the change in the zoning district requested in rezoning application ZMAP 2002-0001 from the TR-3UBF, TR-3LF and TR-1UBF zoning districts to the PD-H 3 zoning district.

### I. REZONING PLAT AND PHASING

A. Substantial Conformity. The Property shall be developed in substantial conformity with Sheets 1-9 of the Kirkpatrick West Rezoning Application attached hereto as Exhibit A dated May 2004, revised through July 14, 2005, prepared by Urban Engineering Associates, Inc. (collectively the "Concept Plan"). The Property shall be developed with no more than 373 residential dwelling units, including affordable dwelling units (ADU's), consisting of the following mix:

1. Market Rate Dwelling Units
  - 173 single family detached units (maximum)
  - 54 single family attached units (maximum)
  - 122 multi-family units (maximum)
2. Affordable Dwelling Units (ADU's)
  - 12 single family attached
  - 12 multi-family units

The development and administration of the ADU's shall be in accordance with the provisions of Article VII of the Loudoun County Zoning Ordinance.

**October 26, 2005**

**Page 2**

The Property shall also include a retail area and a community recreation area in the areas on the Concept Plan designated as the retail area and the community recreation center, respectively. The retail area, subject to zoning modification approval, shall consist of a maximum of 15% of the total area of the Property and will contain a mix of retail and service uses, in accordance with the Retail and Service Use provisions of the PD-H3 Zoning District, and be administered as PD-CC-CC. Active recreation uses including a community building, swimming pool, play area and tennis courts shall be located in the community recreation area and in other areas indicated on the Concept Plan.

**B. Phasing of Development.** The Property will be developed in two phases as indicated below in Proffer IV.B. In addition, no zoning permits for construction of non-residential or residential units on the Property shall be issued until (1) a paved road connection, constructed by the Owner or others, is open for traffic use between the Property and Route 659 (Gum Spring Road) and (2) one or more of the following roads are constructed to a four lane section between Braddock Road (Route 620) and Route 50; Relocated Route 659, Gum Springs Road (Route 659), or Gum Springs Road/West Spine Road. Onsite development activities which do not require a building or zoning permit, including but not limited to grading, utilities, and road construction shall be permitted at all times.

**C. Garage Parking Restrictions.** Each market rate residential unit shall incorporate a garage. Prior to the first site plan or record plat approval for the Property, whichever is first in time, the Owner shall prepare and record a covenant against the Property, which shall preclude the primary use of the garages for purposes other than for the storage of vehicles.

**D. Direct Lot Access.** Lots that are rear loaded shall not have direct driveway access to public roads located in the development.

## **II. PUBLIC WATER AND SANITARY SEWER**

The Property shall be developed using public water and sewer facilities, which shall be provided to the Property at no cost to the County or to the Loudoun County Sanitation Authority (LCSA).

## **III. STORMWATER AND WATER QUALITY**

**A.** With the exception of construction of stormwater management facilities, trails, and utility crossings, no land development activities shall be located and/or maintained in the designated tree save areas indicated on the Concept Plan. Disturbances permitted within tree save areas of the Property shall be designed to minimize the area of disturbance, retain existing vegetation to the extent possible, and shall be designed and constructed in a manner to protect water quality.

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**Page 3**

B. Either prior to or concurrently with submission of each preliminary subdivision application for portions of this Property, the Owner shall submit for County review the U.S. Army Corps of Engineers wetland delineation study and permit application for any wetland areas within the confines of the portion of the Property which is the subject of such preliminary subdivision plan application.

C. The Property shall be developed in accordance with best management practices which shall be defined as follows:

1. Structural and non-structural measures used in combination or as stand alone facilities, shall be provided to control runoff from developed areas of the Property for eighty percent (80%) of the Property. Nonstructural measures should include site design elements that minimize the creation of new impervious area, retain native vegetation to the extent possible, and utilize storm drainage systems that replicate the pre-development hydrology to the extent practicable.

2. Concurrently with submission of construction plans and profiles for each section of the Property, documentation in the form of calculations, design narrative and other pertinent supporting information shall be provided within the proposed best management practices facilities designed to illustrate that there will be a fifty percent (50%) phosphorus removal rate associated with the design for developed areas of the Property, per the following guidelines:

- a. the storage volume for each best management practices impoundment structure shall be designed per the Loudoun County requirements stated within Chapter Five of the Facilities Standards Manual (the "FSM").
- b. All BMP Facilities will be located off line of minor floodplain stream valleys.
- c. Acceptable BMP measures, design and construction methods, and phosphorous removal efficiencies shall be based on the FSM in place at the time of acceptance of the construction plans and profiles supplemented by the standards of the Virginia Stormwater Management Handbook, latest edition.

#### **IV. TRANSPORTATION**

A. **Road Network.** Unless otherwise specified in the Proffers, all roads required for access to and within the Property will be constructed in accordance with the County of Loudoun's Land Subdivision and Development Ordinance (the "LSDO") and the FSM to provide access to the development parcels depicted on the Concept Plan as they are developed. All roads required for access to and within the Property will be designed and constructed in accordance with Virginia Department of Transportation ("VDOT") and County standards, unless modified otherwise. The Owner shall grant the County a public access easement for all emergency vehicles over the private roads developed on the Property concurrently with development.

**October 26, 2005**

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The Owner shall dedicate to the County the land necessary for construction of public roads which shall include all related easements outside the right-of-way, such as slope, maintenance, storm drainage and utility relocation easements. Dedication of right-of-way and easements shall occur either concurrently with development of each section of the Property or upon request by the County in advance of development on the Property by the Owner if: (1) others have prepared construction plans and profiles consistent with the Concept Plan that require dedication to commence construction; and (2) provided the Owner shall not be obligated to incur costs or post bonds with the County in connection with such dedication.

**B. Construction of Transportation Improvements.** Transportation improvements shall be constructed by the Owner in accordance with the following transportation construction phasing schedule:

1. **Phase 1 (up to 219 dwelling units and 25,000 square feet of retail uses)**  
– Prior to approval of any record plat or site plan, whichever is first in time, for development on the Property, the Owner shall:
  - a. Dedicate right-of-way 45 feet in width along the Route 620 (Braddock Road) frontage of the Property and construct or bond for construction a half section of a four lane divided roadway with required turn lanes between Relocated Route 659 to the west and the eastern Property boundary.
  - b. Dedicate right-of-way along the future Relocated Route 659 frontage of the Property as shown on the Concept Plan and construct or bond for construction a half section of a four lane divided roadway from Route 620 (Braddock Road) to the southernmost entrance to the Property, including all turn lanes, on Relocated Route 659 from Braddock Road to the southernmost entrance to the Property, in the location illustrated on the Concept Plan, as required by the County and VDOT.
  - c. Dedicate right-of-way and construct or bond for construction on-site roads as shown on the approved record plats or site plans.
2. **Phase 2 (up to 373 dwelling units and balance of retail uses)** – Prior to issuance of any zoning permits for development on the Property in excess of 219 dwelling units and 25,000 square feet of retail and service uses, the Owner will:
  - a. Install a traffic signal at the Route 620 (Braddock Road)/Relocated Route 659 intersection, when warranted by VDOT and the County. If warrants for the signal are not met by the issuance a zoning permit for the 335<sup>th</sup> residential, then the Owner shall make a cash equivalent contribution in lieu of installation of the signal.
  - b. Dedicate right-of-way and construct or bond for construction on-site roads as shown on the approved record plats.



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3. The Owner shall receive a capital facility credit against the capital facility contribution described in Proffer V.A. for the cost of off-site construction of Relocated Route 659 set forth above in Proffer IV.B.1.b.

**C. Cash Equivalent Contribution.** Unless otherwise provided in these proffers, the Owner shall contribute to the County, or its designee, including a Community Development Authority ("CDA") or one or more private parties who collectively agree to construct public roadway improvements, an amount equal to the actual cost of constructing the transportation improvements described above in Proffer IV.B 1. a. and b., in lieu of actual construction if said improvements have been constructed or bonded by others prior to bonding for construction by the Owner. For the purposes of determining the in-lieu-of contribution, construction costs shall be deemed to include all engineering, surveying, bonding, permit fees, utility relocation, and other hard costs of construction based on paid invoices. Such contribution in lieu of actual construction shall occur at the time the Owner would otherwise have been required by these Proffers to bond or construct such improvements. As determined by the County, such contribution shall either be used to reimburse the party who constructed such improvements or for regional roadway improvements in the in the same Planning area of the Property.

**D. Interparcel Access.**

1. Interparcel access shall be constructed on-site, up to the Property line in the locations generally shown on the Concept Plan. Said interparcel access shall be constructed, by others, at the time of development of the adjacent property and as approved by the County and VDOT.
2. The Owner shall provide a notice in all sales documents for lots located on the referenced interparcel access point within the Property that such lots are located on a street that is planned to be converted to a through street in the future.

**E. Highway Noise Buffers.** At the time of filing of an application for each preliminary subdivision or site plan approval for any portion of the Property fronting Braddock Road and/or Relocated Route 659, whichever is first in time, the Owner shall establish to the reasonable satisfaction of the County that the residential units to be located along the Braddock Road and Relocated Route 659 frontage of the Property shall be in conformance with the noise standards in the Loudoun County Facilities Standards Manual and the Zoning Ordinance.

**F. Multi-purpose Trail.** The Owner shall bond and/or construct an eight (8) foot wide asphalt multi-purpose trail within the right-of-way along Relocated Route 659 frontages (east side) of the Property as generally shown on Sheet 6 of the Concept Plan. If the trail is not permitted by VDOT to be located within the right-of-way then the trail shall be constructed within a twelve (12) foot wide public access easement and maintained by the Homeowner's Association in the approximate location as shown on the Concept Plan. The trail shall be constructed in sections as adjacent portions of the Property are developed.

**G. Regional Off-Site Right-Of-Way.** In an effort to facilitate construction of the Off-Site Portions of Relocated Route 659 illustrated on the Concept Plan (the "Off-Site ROW"), the Owner shall, within one hundred eighty (180) days of approval of ZMAP 2002-0001, make a good faith effort to acquire the right-of-way necessary to provide for a continuous 120 foot wide right-of-way from Route 620, Braddock Road to the southern-most Property entrance onto Relocated Route 659 at the proposed intersection of Relocated Route 659 with Lightridge Farm Road. In the event the Owner is unable to acquire the Off-Site ROW necessary to construct Relocated Route 659 from Route 620, Braddock Road to the southernmost Property entrance onto Relocated Route 659 at the proposed intersection of Relocated Route 659 with Lightridge Farm Road as shown on the Concept Plan, then the Owner shall inform the County of such inability and will request the County to obtain such right-of-way by eminent domain. The County will not be obligated to obtain such right-of-way by eminent domain, but if it does acquire the right-of-way by eminent domain, all costs of such acquisition, including but not limited to land acquisition, shall be reimbursed by the Owner.

If the Owner or the County acquires the Off-Site ROW and the cost of such acquisition is paid by the Owner then the cost of acquisition of the Off-Site ROW, as determined by a fully executed contract for such acquisition, shall be credited against the capital facilities payment stated in Proffer V.A.

Upon completion of construction and acceptance by VDOT of the portion of Relocated Route 659 described above in Proffer IV.B.1.b. the Owner will request the County and/or VDOT to relocate or abandon the portion of Lightridge Farm Road, Route 705 illustrated with crosshatching on the Concept Plan.

**V. CAPITAL FACILITIES/RECREATION AND OPEN SPACE/TREE PRESERVATION**

**A. Capital Facilities Contributions.** The Owner will pay Loudoun County a capital facility contribution in the amount of FOURTEEN THOUSAND SEVENTY THREE AND 87/100 (\$14,073.87) for each market rate unit constructed on the Property (the "Capital Facilities Contribution"). The Capital Facilities Contribution shall be paid prior to issuance of the zoning permit for each market rate unit. The amount of the Capital Facilities Contribution shall escalate in accordance with the Consumer Price Index from the base year of 2005.

**B. Pedestrian Circulation, Recreation and Tree Preservation.**

1. The Owner shall construct a pedestrian circulation system consisting of sidewalks and trails on the Property in substantially the same location as illustrated on Sheet 5 of the Concept Plan. Sidewalks need not be constructed in locations where trails are constructed to provide the pedestrian circulation linkage depicted on the Concept Plan, but shall be constructed on both sides of each road within the single family detached areas of the Property and in front of the single family attached units. Sidewalks and trails shall be constructed at a width and of materials as required by the FSM. Sidewalks and trails shall be constructed in phases concurrently with the development of land in areas adjacent to such sidewalks and trails and

shall be subject to an easement providing access to the general public in addition to residents of the Property.

2. The Owner shall convey to the Homeowners Association for the Property ("HOA") the tree save area illustrated in Land Bay A on the Concept Plan and the active recreation uses in the area of the Property designated Community Recreation Center on the Concept Plan. The active recreation uses shall at a minimum include a 5,000 sq. ft. clubhouse, a 25 meter (minimum) pool and 2 tennis courts as illustrated on the Concept Plan. The construction of the active recreation facilities and the conveyance of such facilities to the HOA shall be completed prior to the issuance of the 300<sup>th</sup> residential zoning permit for the Property.

3. The Owner shall convey to the County the 15.29 acre public use area for recreational uses located in Land Bay "C". The Owner shall construct at a minimum one soccer field (without lights) and parking area as shown in Land Bay C of the Concept Plan. At the County's sole discretion, the County may locate a maximum 5-acre fire & rescue site on the north side of the internal site road. Construction of the active recreation facilities in Land Bay C, and the conveyance of such facilities to the County, shall be completed prior to the issuance of the 350<sup>th</sup> residential unit.

4. As adjacent areas of the Property receive record subdivision plat approval, the Owner shall construct and convey to the HOA the SWM/BMP Ponds, trails and open space, and tree save areas illustrated on the Concept Plan. The declaration of covenants, conditions and restrictions recorded against the Property shall require the establishment of maintenance procedures and sufficient funding to preserve existing trees in tree save areas and to ensure that the HOA will have the financial ability to maintain such facilities in a decent clean, safe and healthy condition for use by residents of the Property.

**C. Tree Preservation.** Within the areas illustrated as Tree Save areas on Sheets 6 and 7 of the Concept Plan, the Owner shall preserve existing healthy trees, provided that existing trees may be removed in the Tree Save areas for construction of trails illustrated within such areas, and utilities, including stormwater management, necessary for development of the Property. The boundaries of these Tree Save areas shall be delineated on the construction plans approved for each section of the development. The "Tree Save" areas located adjacent to land disturbing areas shall be protected by fencing during the construction phase of development. Such fencing shall consist of a four foot (4') high orange plastic fence attached to wooden posts. The tree protection fencing shall be installed prior to any land disturbing or clearing activities occurring on the Property and shall be clearly visible to construction personnel. If, during construction on the Property and prior to bond release, it is determined by the County in consultation with the project arborist that any of the healthy trees located within the Tree Save area boundaries have been damaged during construction and will not survive, then the Owner shall remove each such tree and replace each such tree with two 2 ½ - 3 inch caliper deciduous trees. The placement of the replacement trees shall be in the area of each such tree removed, or in another area as requested by the County. Clearing of scrub and understory trees within the "Tree Save" areas shall be permitted to create enhanced park spaces.



## **VI. EMERGENCY SERVICES**

A. **Owner's Contribution.** At the time of the issuance of each zoning permit, the Owner shall make a one time contribution of One Hundred Twenty Dollars (\$120.00) per unit for each residential dwelling unit, which shall be payable to the County for distribution by the County to the primary volunteer fire and rescue companies providing service to the Property. Such contribution shall be adjusted annually in accordance with changes to the CPI, beginning from a base year of 1988. Contributions pursuant to this paragraph shall be divided equally between the primary servicing fire and rescue companies providing fire and rescue services to the Property. Notwithstanding the foregoing, at such time as the primary fire and/or rescue service to the Property is no longer provided by an incorporated volunteer company, the obligation to make the contributions listed within this paragraph shall cease or be reduced by half if only one service is no longer provided by an incorporated volunteer company with the reduced contribution to be provided only to the remaining volunteer company. The intent of these provisions is to support a volunteer fire and rescue system so long as it is the primary provider of fire and rescue services to the Property.

B. **Sprinkler Systems.** The Owner shall require all builders to provide, as an option to purchasers of single-family detached residences, the opportunity to purchase and have installed residential sprinkler systems for each such residence. The Owner shall install adequate infrastructure to ensure adequate water flow and pressure for said sprinkler systems. This proffer shall not require the builders to install such sprinkler systems in residences on the Property unless the purchasers of such residences choose to exercise such option prior to the start of construction and to pay associated costs in association with such purchase and installation. Any homes utilized by the Owner on the Property for marketing/display purposes shall be constructed with the sprinkler option.

## **VII. HOMEOWNERS' ASSOCIATION**

The Owner will establish a Homeowners' Association prior to the approval of first record subdivision plat or site plan on the Property whichever is first in time. Notwithstanding the foregoing, the Owner may join an established HOA or use its best efforts to cause the declaration of covenants conditions and restrictions recorded in conjunction with the subdivision and development of the Kirkpatrick Farms development (ZMAP 1995-0014) (the "Kirkpatrick Farms Declaration") to be amended to provide for inclusion of the Property as additional property to be subject to the Kirkpatrick Farms Declaration so that there shall be one Homeowners' Association for this Property and the land subject to the Kirkpatrick Farms Declaration. The option to be included in the Kirkpatrick Farms HOA must be exercised, if it is to be exercised, prior to approval of the first record subdivision or first site plan, whichever is first in time, for the Property. The option for inclusion of the Property in the Kirkpatrick Farms Homeowner's Association (HOA) shall occur only if the Kirkpatrick Farms HOA agrees to assume the responsibilities stated in these proffers and shall be in lieu of setting up a separate homeowner's association for the Property. Membership in the Homeowners' Association, or if included in the Kirkpatrick Farms HOA or other established HOA, then memberships in the Kirkpatrick Farms HOA or other established HOA, shall be required of owners of all residential units on the

October 26, 2005

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Property. The Owner's Association shall have among its duties, snow and trash removal, maintenance of each of the common area amenities specified herein, including private streets/alleys, private parking areas in all townhouse and community recreation areas, stormwater management facilities, common areas, including open space, trails and play areas. Owner's association documents establishing a new HOA or subjecting the Property to the Kirkpatrick Farms HOA or other existing HOA, which are satisfactory in form to the County, shall be submitted for review and approval and recorded prior to the approval of the first application for record subdivision plat or site plan, whichever is first in time, for the Property.

**VIII. EXISTING WELLS AND DRAINFIELDS**

In accordance with County Health Department requirements, the Owner shall abandon all existing wells and drainfields located on the Property.

**IX. TYPE 1 SOILS SURVEY**

The Owner shall prepare and submit a Type 1 Soils Survey of the Property prior to submission of the first preliminary subdivision plan or site plan, whichever is first in time, to the County.

**X. ARCHEOLOGICAL SURVEY**

Prior to any land disturbance and/or approval of any record plat or site plan, whichever occurs first in time, for the Property, the Applicant shall provide the County with the results of a Phase II Archeological study for the site identified as 44LD853 in the Phase I Archeological Study prepared by Thunderbird Archeological Associates, Inc. If a Phase III Archeological Study is recommended for site 44LD853 as a direct result of the Phase II Study, the Phase III will be conducted prior to any land disturbance and/or approval of any record plat or site plan (whichever occurs first) for the Property. All future land development submissions shall depict the location of the site.


Notwithstanding the above, the Owner shall not be required to perform any additional archeological studies beyond the previously performed Phase I for site 44LD853 if the site remains undisturbed during the course of development.

October 26, 2005

**XI. BINDING EFFECTS**

The Owner warrants that it owns all interests in the Property; that it has full authority to bind the Property to these conditions; and that no signature from any third party is necessary for these Proffers to be binding and enforceable in accordance with their terms and that the proffers are entered into voluntarily.

Loyalty Associates, LC

By:  (SEAL)  
Name: James A. Duszynski  
Title: CEO

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF Fairfax, to-wit:

Before the undersigned, a Notary Public in and for the aforementioned jurisdiction, personally appeared James A. Duszynski, as CEO of Loyalty Associates, LC, who acknowledged that he executed the foregoing Proffers with the full power and authority to do so.

IN WITNESS WHEREOF, I have affixed my hand and seal this 8<sup>th</sup> day of November, 2005.

  
Notary Public

My Commission Expires: March 31, 2007



# Kirkpatrick West

## Zoning Modifications

July 14, 2005

1.	Section 3-507(E)(2) to eliminate the garage set back requirement of 20 feet from the front line of buildings.
2.	Section 3-511(A) and 3-610(A) to reduce the 25 foot minimum setback from rights-of-way other than arterial and collector roads to a 10 foot minimum setback for all units.
3.	Sections 3-511(C), 4-110(B) of the Revised 1993 Zoning Ordinance and Sections 1245.01(2), 1245.05(1) of the Loudoun Subdivision Ordinance to allow for single family detached units to be accessed by private streets.
4.	Section 3-607(B) to allow a maximum height of 55 feet for a multi-family structure without additional setbacks.
5.	Section 4-105 to permit the land area devoted to retail and service uses up to 15% of the planned development district.
6.	Section 4-109(C)(2) to eliminate the 50 foot open space buffer along portions of the southwest boundary of the R-16 multifamily land bay "B" that are adjacent to wetlands and/or 100 foot setback along Route 659.
7.	Section 4-109(D) to eliminate the 75 foot buffer and Type III buffer yard between planned shopping center and residential areas
8.	Section 4-109(E) to permit building heights at the edge Property boundary for multi-family units up to 55 feet and for single family detached and attached units up to 35 feet.
9.	Section 4-110(I)(2) to modify regulations to eliminate 50' buffers between land bays.
10.	Section 4-202(B) to permit the community center commercial area to be larger than 20 acres.
11.	Section 4-205(C)(1)(B) to reduce the 35 foot minimum setback from rights-of-way to 15 feet.
12.	Section 4-205(C)(2) to eliminate the 100 foot minimum setback from any adjacent residential district or use.
13.	Section 5-200(A)(6) to permit covered multi-family unit entry porches to project five feet into the front yard.
14.	Section 5-1414(A): to eliminate the buffer yards required between residential unit types for the internal blocks and landbays in the development.
15.	Section 7-803(C)(1)(a) to reduce the front yard for single family detached units from 15' minimum to 10' minimum.
16.	Section 7-803(C)(1)(c) to reduce the rear yard for rear loaded single family detached units from 25' to 10'.
17.	Section 7-803(C)(2)(a) to reduce the front yard from 15' minimum to 10' minimum for townhouse and duplex units.
18.	Section 7-903(C)(2)(a) to reduce the front yard for multi-family units to 10' from the back of the curb.
19.	Section 7-903(C)(2)(b) to reduce the side yard for multi-family units to 8', including corner lots.
20.	Section 7-903(C)(2)(c) to reduce the rear yard requirement to 15 feet for multi-family units where vehicular access to parking is provided at the rear of the lot.

